

# EXHIBIT A

THE HONORABLE RICHARD A JONES

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ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

v.

TAYLOR SHELLFISH COMPANY, INC.,  
Defendant.

CIVIL ACTION NO. 16-01517 RAJ

DEFENDANT'S FIRST DISCOVERY  
REQUESTS TO PLAINTIFF EEOC AND  
PLAINTIFF EEOC RESPONSES THERETO

Plaintiff Equal Employment Opportunity Commission ("EEOC") provides the following response to "Defendant's First Discovery Requests to Plaintiff EEOC" as follows, which also supplement the EEOC's initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1):

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EEOC'S RESP TO 1<sup>ST</sup> DSC REQ- Page 1 of 27

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Seattle Field Office  
909 First Avenue, Suite 400  
Seattle, Washington 98104-1061  
Telephone: (206) 220-6885  
Facsimile: (206) 220-6911  
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**GENERAL OBJECTIONS**

1  
2 1. Plaintiff EEOC objects to Defendant First Discovery Requests to EEOC to the  
3 extent that they seek information that is privileged from disclosure by the Attorney-Client  
4 Privilege and/or by the Attorney Work Product Doctrine.

5 2. Plaintiff EEOC further objects to this discovery to the extent that it seeks  
6 information that is protected from disclosure by the Governmental Deliberative Process  
7 privilege.

8 3. Plaintiff EEOC further objects to this discovery to the extent that it seeks  
9 information that is protected from disclosure by the Therapist-Patient privilege and other privacy  
10 protections.

11 4. Plaintiff EEOC also objects to this discovery to the extent that it seeks  
12 information gathered during the conciliation process which may not be disclosed pursuant to  
13 Section 706(b) of Title VII, 42 U.S.C § 2000e-5(b).

14 5. Plaintiff EEOC also objects to this discovery on the ground that it is repetitive and  
15 duplicative to the extent that it seeks information that has already been disclosed through  
16 Plaintiff EEOC's initial disclosures which were provided to Defendant pursuant to Fed. R. Civ.  
17 P. 26(a)(1).

18 6. Plaintiff EEOC provides these responses based upon its present knowledge,  
19 information and belief, and after a reasonable inquiry. However, discovery is ongoing and  
20 EEOC hereby acknowledges its duty and reserves its right to amend, correct or supplement these  
21 responses.

22 ///

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24 ///

25 ///

1 could require the EEOC to reveal information that was created during conciliation and/or is  
 2 deliberative. Notwithstanding these objections, EEOC directs Defendant to EEOC's and  
 3 Defendant's initial disclosures.

4  
 5 **INTERROGATORY NO. 18:**

6 Identify all medical providers or counselors who have provided evaluation, treatment or  
 7 care to Claimant since January 1, 2007. For each provider identified state the approximate dates  
 8 of treatment, the nature of the condition necessitating treatment, and specifically state whether  
 9 the treatment was related to any injuries or damages claimed in this lawsuit.

10 **RESPONSE:**

11 EEOC objects that this discovery request is overbroad and unduly burdensome, and on  
 12 the basis of relevance because it seeks information about Mr. Daniels' medical history for the  
 13 past ten years and because there is no limitation on the scope of this request. For example, this  
 14 discovery request seeks information and documents about any physical condition no matter how  
 15 trivial or transitory. EEOC also objects to this invasive discovery request about any "medical  
 16 doctor, psychologist, psychiatrist, professional counselor, therapist, and/or other health care  
 17 provider who has provided treatment, counseling, therapy, assessment, rehabilitation or other  
 18 health-related services" to Mr. Daniels for the past ten years to the extent it seeks information  
 19 about any physical or mental impairment that Mr. Daniels might have. In addition to the  
 20 foregoing, EEOC further objects to this interrogatory to the extent that it seeks information about  
 21 any "psychologist, psychiatrist, professional counselor, therapist, and/or other health care  
 22 provider who has provided treatment, counseling, therapy" to Mr. Daniels for the past ten years  
 23 because such information about the "condition" and "nature of the Health Services provided to  
 24 him" is protected from disclosure by the Therapist-Patient privilege. *Jaffee v. Redmond*, 518  
 25 U.S. 1 (1996).

1 EEOC further objects on the grounds that the request is unreasonably broad and unduly  
 2 burdensome because the EEOC brings a “garden variety” emotional distress claim for Mr. Holt.  
 3 Again, mental health records, to the extent they exist, are protected by the Therapist-Patient  
 4 privilege. The Supreme Court’s ruling in *Jaffee v. Redmond*, 518 U.S. 1 (1996), and its progeny,  
 5 have established that a patient’s statements to his psychologist or mental health service provider  
 6 are privileged, and unless a plaintiff’s mental state is placed into issue, this privilege is not  
 7 waived. Courts in the Ninth Circuit have held that merely alleging “garden variety” emotional  
 8 distress, without more, does not place one’s mental state at issue. See *Fritsch v. City of Chula*  
 9 *Vista*, 1987 F.R.D. 614 (S.D. Cal. 1999). See also *Cesar v. Mountanos*, 542 F.2d 1064, 1067  
 10 (9th Cir. 1976)(emphasizing the importance of protecting confidentiality between  
 11 psychotherapist and patients).

12 EEOC also objects to this interrogatory on the grounds that the request is unreasonably  
 13 broad and unduly burdensome because many trial courts in the Ninth Circuit have recognized the  
 14 strong privacy and confidentiality interests an individual has in his/her medical history when the  
 15 individual has not put his/her entire medical history at issue in a discrimination case, i.e., by not  
 16 claiming a specific bodily injury. See *Sims v. Lakeside Sch.*, 2007 WL 5417731 (W.D. Wa. Mar.  
 17 15, 2007); see also *EEOC v. Serramonte*, 237 F.R.D. 220 (N.D. Cal. Mar. 22, 2006). Finally, the  
 18 EEOC notes that discovery is ongoing. The EEOC may supplement this answer as appropriate.

19  
 20 **REQUEST FOR PRODUCTION NO.12:**

21 Please produce all medical records, including mental health and psychotherapy records,  
 22 for every health care provider (including social workers, psychiatrists, psychologists, therapists,  
 23 and other medical professionals) who has treated the Claimant for injuries or harm allegedly  
 24 resulting from incidents referred to in the Complaint.

**RESPONSE:**

EEOC objects that this discovery request is overbroad and unduly burdensome, and on the basis of relevance because it seeks information about Mr. Daniels' medical history for the past ten years and because there is no limitation on the scope of this request. For example, this discovery request seeks information and documents about any physical condition no matter how trivial or transitory. EEOC also objects to this invasive discovery request about any "medical doctor, psychologist, psychiatrist, professional counselor, therapist, and/or other health care provider who has provided treatment, counseling, therapy, assessment, rehabilitation or other health-related services" to Mr. Daniels for the past ten years to the extent it seeks information about any physical or mental impairment that Mr. Daniels might have. In addition to the foregoing, EEOC further objects to this interrogatory to the extent that it seeks information about any "psychologist, psychiatrist, professional counselor, therapist, and/or other health care provider who has provided treatment, counseling, therapy" to Mr. Daniels for the past ten years because such information about the "condition" and "nature of the Health Services provided to him" is protected from disclosure by the Therapist-Patient privilege. *Jaffee v. Redmond*, 518 U.S. 1 (1996).

EEOC further objects on the grounds that the request is unreasonably broad and unduly burdensome because the EEOC brings a "garden variety" emotional distress claim for Mr. Holt. Again, mental health records, to the extent they exist, are protected by the Therapist-Patient privilege. The Supreme Court's ruling in *Jaffee v. Redmond*, 518 U.S. 1 (1996), and its progeny, have established that a patient's statements to his psychologist or mental health service provider are privileged, and unless a plaintiff's mental state is placed into issue, this privilege is not waived. Courts in the Ninth Circuit have held that merely alleging "garden variety" emotional distress, without more, does not place one's mental state at issue. See *Fritsch v. City of Chula Vista*, 1987 F.R.D. 614 (S.D. Cal. 1999). See also *Cesar v. Mountanos*, 542 F.2d 1064, 1067

1 (9th Cir. 1976)(emphasizing the importance of protecting confidentiality between  
2 psychotherapist and patients).

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6 individual has not put his/her entire medical history at issue in a discrimination case, i.e., by not  
7 claiming a specific bodily injury. See *Sims v. Lakeside Sch.*, 2007 WL 5417731 (W.D. Wa. Mar.  
8 15, 2007); see also *EEOC v. Serramonte*, 237 F.R.D. 220 (N.D. Cal. Mar. 22, 2006). Finally, the  
9 EEOC notes that discovery is ongoing. The EEOC may supplement this answer as appropriate.

10  
11 **INTERROGATORY NO. 19:**

12 Does Claimant contend he has lost any income, wages, retirement or other benefits or  
13 other benefits, past, present or future, based on any incidents referred to in your Complaint? If  
14 so, please state the amount of any such lost income, wages, retirement, or other benefit; and the  
15 dates or time period applicable to such income, wages, retirement or other benefit or emolument.

16 **RESPONSE:**

17 Mr. Daniels was out of work for approximately three months. Plaintiff EEOC claims lost  
18 wages during this period. After leaving Taylor, Mr. Daniels began his employment with the  
19 Naval Hospital in Oak Harbor on May 19, 2014. When Mr. Daniels left Taylor he was making  
20 \$15.50 per hour and was working 40 hours per week. EEOC estimates that Mr. Daniels lost  
21 \$7,985.85 in lost wages. In addition, Mr. Daniels lost his 401K with Taylor and had to cash this  
22 out. As a result of his constructive discharge from Taylor his credit score went down. Finally,  
23 the EEOC notes that discovery is ongoing. The EEOC may supplement this answer as  
24 appropriate.

1 DATED this 4th day of May, 2017.

2 ROBERTA L. STEELE  
3 Regional Attorney

P. DAVID LOPEZ  
General Counsel

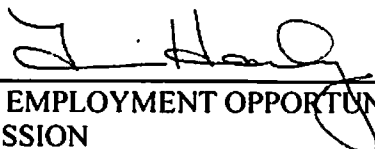
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10 BY:   
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17 Attorneys for Plaintiff EEOC  
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**CERTIFICATE OF SERVICE**

I am, and was at the time the herein service took place, a citizen of the United States, over the age of eighteen (18) years and not a party to the above-entitled cause.

I am employed in the Legal Unit of the San Francisco District Office of the United States Equal Employment Opportunity Commission.

My business address is U.S. Equal Employment Opportunity Commission, San Francisco District Office, Phillip Burton Federal Building, 450 Golden Gate Ave., 5<sup>th</sup> Floor West, P.O. Box 36025, San Francisco, CA 94102.

On the date that this declaration was executed, as shown below, I personally served the following document(s):

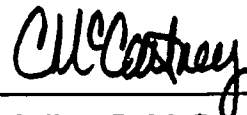
**DEFENDANT'S FIRST DISCOVERY REQUESTS TO PLAINTIFF EEOC AND PLAINTIFF EEOC RESPONSES THERETO**

by via email, to the following person(s):

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Gordon Thomas Honeywell LLP  
1201 Pacific Avenue, Suite 2100  
Tacoma, Washington 98402  
sbloomfield@gth-law.com

*Attorney for Defendant Taylor Shellfish Co., Inc.*

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 4, 2017, at Phoenix, Arizona.



Colleen D. McCartney